

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

Present: G. Amar Anand, B.A.LL.B (Hons)
District Munsif Uthangarai

On Saturday, 06th day of August, 2022

I.A.No. 07 of 2022 in O.S.No. 28 of 2021
TNKI13-000022-2021

1. Beemaraji
2. Santhi
3. Alagammal
4. Praveenkumar

....Petitioners 1 to 4 / Defendants 1 to 4

/versus/

1. K. Sekar
2. P. Baskar
3. T. Sampath
4. P. Chakravarthi

.... Respondents 1 to 4 / Plaintiffs 1 to 4

This interlocutory application came up before this Court for final hearing on 26.07.2022 in the presence of Thiru. S. Moorthi, learned counsel for the petitioners / defendants and Thiru. K. Murugan, learned counsel for the respondents / plaintiffs and upon perusal of records, submissions having stood for consideration till date, this Court delivers the following:

ORDER

The interlocutory application filed under Rule 7 of Order IX and section 151 of the Code of Civil Procedure, 1908 by the petitioners 1 to 4 / respondents 1 to 4 / defendants 1 to 4 to set aside the *ex parte* order passed against the them in O.S.No. 28 of 2021.

1. Brief of averments of the petitioners: The petitioners aver that suit is filed against the petitioners for relief of permanent injunction and aver that the petitioners could not appear and file written statement on 09.06.2022 because the

petitioners had applied under Right to Information Act for documents relating to sub division of old survey no.1/6 and FMB and other revenue documents and they still could not be obtained. The first petitioners aver he suffered from severe diarrhea and had been treated in hospital and could not appear before the Court and pleaded that they have good defence and pray for setting aside of order of *ex parte*.

2. **Brief of averments of respondents:** The respondents deny all the averments of the petitioners and aver that the *ex parte* order passed against the petitioners is dated 06.12.2021 and not on 09.06.2022 and state that the petitioners had been delaying the proceedings and even after 06.12.2021, when the case was posted for hearings from 28.02.2022 to 29.06.2022, the petitioners have not filed this application during those hearings. The respondents aver that the petitioners have wantonly not appeared and have filed this application only at the far end when case was reserved for judgment. The respondents aver that the petitioners have stated the date of *ex parte* order as 09.06.2022 instead of 06.12.2021 and have filed this application only to prolong the proceedings seek for dismissal of the petition.

3. **Point for determination:** The question to be determined is whether there is good cause to allow this application?

4. No oral or documentary evidence is adduced on either side.

5. **Discussion:** Heard both parties and perused case records. Upon perusal of case records, it appears that the notices to the petitioners were duly served and they failed to appear on 06.12.2021 and not 09.06.2022 as averred by the petitioners. Due to non-appearance of the petitioners either in person or through pleader, this Court ordered the suit to be heard *ex parte*. Even though the date of order of *ex parte* was passed against the petitioners on 06.12.2021 and the petitioners have stated the date of order as 09.06.2022, this Court is of opinion

that it is a fact that the petitioners have been set *ex parte* and mere mentioning of wrong date will not cause any prejudice to the respondents considering the nature of this petition and the consequence of allowing this petition. The reasons adduced by the petitioners for non-appearance is that the first petitioner had severe diharrea and had been treated in the hospital. The reasons in the affidavit are found satisfactory. This Court of opinion that the principles of natural justice warrant hearing of both sides before rendering any decision to a dispute for effective redressal and that the petitioners have to be given opportunities to be heard in the interest of justice and fair trial. Thus, this Court is of opinion that this application is one to be allowed upon cost.

6. In the result, the application stands allowed upon condition that cost of Rs. 200/- to be paid by the petitioners to the respondents and a cost of Rs. 200/- to be paid by the petitioners to the Legal Services Authority on or before 26.08.2022.

This order dictated to the typist and typed in the computer, corrected by me and pronounced by me in open court on 06th August 2022.

Sd/-XXXXX
District Munsif,
Uthangarai.

Annexure

List of Witnesses

Petitioner side: Nil

Respondent side: Nil

List of Documents marked:

Petitioner side: Nil

Respondent side: Nil

Sd/-XXXXX
District Munsif,
Uthangarai.